

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LARRY MARVEL,	§
	§ No. 18, 2020
Defendant Below,	§
Appellant,	§ Court Below—Superior Court
	§ of the State of Delaware
v.	§
	§ Cr. ID No. 0510007925 (N)
STATE OF DELAWARE,	§
	§
Plaintiff Below,	§
Appellee.	§

Submitted: March 17, 2020

Decided: April 20, 2020

Before **SEITZ**, Chief Justice; **VALIHURA** and **MONTGOMERY-REEVES**, Justices.

ORDER

After careful consideration of the appellant’s opening brief, the State’s motion to affirm, and the record on appeal, we conclude that the judgment below should be affirmed on the basis of and for the reasons assigned by the Superior Court’s letter order, dated December 18, 2019, denying the appellant’s request for sentence modification. The Superior Court may modify a sentence under 11 *Del. C.* § 4217 “solely on the basis of an application filed by the Department of Correction for good cause shown.”¹ It is within the sole discretion of the Department of Correction to apply for a modification of an inmate’s sentence under 11 *Del. C.* § 4217 in the first

¹ 11 *Del. C.* § 4217(b).

instance.² Because the Department of Correction did not initiate the process under Section 4217, Marvel's motion was an untimely and repetitive motion under Superior Court Criminal Rule 35(b), and the Superior Court did not abuse its discretion by denying the motion.³

NOW, THEREFORE, IT IS ORDERED that the motion to affirm is GRANTED and the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Collins J. Seitz, Jr.
Chief Justice

² *Woods v. State*, 2003 WL 1857616 (Del. Apr. 8, 2003). *See also Croll v. Metzger*, 2019 WL 2394238 (Del. June 5, 2019) (stating that the Department of Correction does not have a non-discretionary duty to apply for modification of any inmate's sentence under § 4217).

³ *Woods*, 2003 WL 1857616.